IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR MIAMI-DADE COUNTY

CIRCUIT CIVIL DIVISION

CASE NO. 15-000256-CA-01 (08)

MICHAEL A. PIZZI, JR., and MARY COLLINS,

Plaintiffs,

v.

TOWN OF MIAMI LAKES, FLORIDA, WAYNE SLATON,

Defendants.

MAYOR WAYNE SLATON'S VERIFIED RESPONSE IN OPPOSITION TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

Mayor Wayne Slaton responds in opposition to Plaintiffs' cross-motion for summary judgment as follows:

In his papers, Mr. Pizzi all but ignores one critical fact – the Florida Supreme Court analyzed the issue raised in this case and stated point blank:

During Petitioner's suspension, the Town held a special election for mayor in accordance with the requirements of its charter. The permanent replacement mayor [Mayor Slaton] assumed office on October 8, 2013, and the new mayor's term will run until the next regularly scheduled election in November 2016.¹

The Supreme Court did not reach this conclusion idly or haphazardly. Governor Scott and Mr. Pizzi both submitted pleadings to the Florida Supreme Court specifically addressing their respective positions on the legal issues involved. The Court stated unequivocally that a new Mayor – Mayor Slaton – had been elected and would serve until November 2016.

¹ *Pizzi v. Scott*, No. SC14-1634, 2014 WL 7277376, at *1 (Fla. Dec. 22, 2014) (emphasis added).

There can be no mistake about the Court's meaning, for the Court specifically said it was not ordering Mr. Pizzi to be reinstated:

In the order to show cause, this Court stated that it was not suggesting that the Governor is required to reinstate Petitioner to his former municipal office, which has been filled by operation of a special election in accordance with the Town's charter.²

This conclusively negates Mr. Pizzi's argument that upon the lifting of his suspension he was somehow "automatically" reinstated to office.

Furthermore, the Supreme Court's Order explicitly cited Section 112.51, Florida Statutes, and Article IV, Section 7(c), Florida Constitution. Clearly, the Court did not accept Mr. Pizzi's legal analysis.

Mayor Slaton asks this Court to deny Mr. Pizzi's cross-motion for summary judgment and to grant the summary judgment motions filed by Mayor Slaton and the Town.

RESPONSE TO STATEMENT OF THE UNDISPUTED FACTS

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² *Id.* (emphasis added).

³ See Mayor Wayne Slaton's Verified Answer, Showing of Better Title, Defenses, and Affirmative Defenses at \P 24 – 26.

⁴ See Pls.' Cross-Motion for Summ. Judg. at 14.

paragraph 3, and paragraph 4, which recite Mr. Pizzi's legal arguments and conclusions, and overlook relevant authorities, as more fully addressed in the remainder of this memorandum.

ARGUMENT

In the interest of brevity, Mayor Slaton incorporates by reference his previously filed Motion.⁵ Mayor Slaton responds more particularly as follows:

When Mr. Pizzi's petition for mandamus was pending in the Florida Supreme Court, Mr. Pizzi and Governor Scott both addressed the Miami Lakes Charter, Section 112.51, Florida Statutes, and Article IV, Section 7(c), Florida Constitution.⁶

Mr. Pizzi barely mentions the Florida Supreme Court's Order until page 12 of his 15 page memorandum. And when he does address it, he fails to come to grips with the substance of the Court's ruling, and asks this Court to ignore the Supreme Court's Order as "dicta."

Mr. Pizzi's "dicta" argument is incorrect. In his papers in the Florida Supreme Court, Mr. Pizzi said that "this is 'the type of case in which an opinion from this Court would provide important guiding principles for the other courts of this State." The Supreme Court gave that guidance, in an order signed by five Justices. To determine whether Mr. Pizzi was entitled to relief, it was necessary for the Supreme Court to analyze the Charter, Section 112.51 Florida

 $^{^5}$ $\it See$ Mayor Wayne Slaton's Mot. for Summ. Final Judg. and Incorporated Memorandum of Law.

⁶ See Mayor Wayne Slaton's Req. for Jud. Not. at Attachment pages 6 − 17 (Pet. for Mandamus), 125 − 128 (Gov.'s Resp. to Pet. for Mandamus), 131 − 136 (Pet.'s Reply to Gov.'s Resp. to Pet. for Writ of Mandamus), 139 − 143 (Gov.'s Resp. to Court's Request to Show Cause), and 144 − 150 (Pet.'s Reply to Gov.'s Resp. to Court's Request to Show Cause). The index to the Supreme Court record is on the first page of Mayor Slaton's Request for Judicial Notice. The page numbers for the Supreme Court record are in the lower right-hand corner, entitled "Slaton's Req. for Jud. Notice Attach Page ____."

 $^{^7}$ See Id. at 134 (Pet.'s Reply to Gov.'s Resp. to Pet. for Writ of Mandamus) (citation omitted).

Statutes, and the Florida Constitution. The Court's Order could not be clearer: the suspension is to be lifted, but a new Mayor – Mayor Slaton – has been elected.⁸

Rather than address the Supreme Court Order up front, Mr. Pizzi opens his memorandum with an ad hominem attack on the Town's counsel, J.C. Planas. Mr. Pizzi maintains that Mr. Planas argued an inconsistent position in *Spence-Jones v. Dunn*, 118 So. 3d 261 (Fla. 3d DCA 2013). But that is not so. In that case, Spence-Jones had been reinstated by the Governor prior to the expiration of her term of office, and the question was whether she was entitled to run for a third term even though the Miami City Charter contained a two-term limit. No such issue is presented here. ¹⁰

This Court should note that the quotation at the bottom of page three of Mr. Pizzi's Cross-Motion is a quote from Mr. Planas' brief in Spence-Jones, not a quote from the Third District opinion. Indeed, the Third District did not cite or discuss the 1918 In re Advisory Opinion to the Governor, 75 Fla. 674, 78 So. 673 (1918), which Mr. Pizzi quoted.

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⁸ In addition to the Supreme Court's statements not being dicta, well-established case law holds that "dictum of the highest court of this State, in the absence of a contrary decision by that court, should be given persuasive weight" by lower tribunals. See, e.g., Mejia v. Citizens Property Ins. Corp., --- So. 3d ---, 2014 WL 6675717 (Fla. 2d DCA 2014) (quoting Milligan v. State, 177 So. 3d 75 (Fla. 2d DCA 1965). See also Gonzalez v. State, 125 So. 3d 373 (Fla. 3d DCA 2013) (relying on Supreme Court dicta for proper construction of criminal statutes). Indeed, the Supreme Court recognizes its dicta is so persuasive that it has exercised its discretionary jurisdiction to review district court of appeal decisions that conflict with Supreme Court dicta and actually "receded" from dicta when necessary. See, e.g., Cowan, Liebowitz & Latman, P.C. v. Kaplan, 902 So. 2d 755 (Fla. 2005). Thus, in the unlikely event this Court finds the Supreme Court's statements to be dicta, this Court should nevertheless give significant weight to the Court's statements in determining the issues here.

⁹ See Pls.' Cross-Motion for Summ. Judg. at 3.

As an aside, even if Mr. Planas did argue an inconsistent position (he did not), an earlier position argued on behalf of a different client two years ago is not binding on Mayor Slaton or the Town, and is not pertinent in the current case.

In any event, Ms. Spence-Jones was arguing that her temporary suspension should not "count" against the two-term limit for Miami City Commissioners. 118 So. 3d at 262 n.2, 263. Mr. Planas argued the common-sense proposition that where Ms. Spence-Jones was suspended and then reinstated to office, the suspension was temporary in nature and not the functional equivalent of a vacancy.¹¹ There is nothing improper or inconsistent about that argument.

In his memorandum, Mr. Pizzi argues that, "Upon being acquitted, Mayor Pizzi was automatically entitled to reinstatement as a matter of law." That is simply not so. The Florida Supreme Court could not have been clearer that the new Mayor (Mayor Slaton) has been elected and will serve through November 2016. The Court also made clear it was <u>not</u> ordering that Mr. Pizzi be reinstated.

Mr. Pizzi relies on the 1918 Advisory Opinion, but that case supports Mayor Slaton, not Mr. Pizzi. Under the 1885 Florida Constitution, the Governor could remove an officer (who was not liable to impeachment) if the Florida Senate concurred. 78 So. at 673-74. If the Senate "fail[ed] to take action before its adjournment, the officer suspended shall resume the duties of office." *Id.* at 674. Thus, under the old Constitution, there was a provision allowing automatic resumption of office where the Senate failed to act. That provision is not in the current Constitution.

The important point is, even in 1918 the right to resume one's office had a major limitation: the officer could only resume the office "if the term for which he was elected has <u>not</u> expired" *Id.* at 674 (emphasis added). The 1918 provisions regarding terms of office have

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¹¹ See Pls.' Cross-Motion for Summ. Judg. at 3.

 $^{^{12}}$ *Id.* at 5.

vanished, home rule powers have been granted to municipalities under the current Constitution, and the question is whether Mr. Pizzi's term ended under current law and the Charter.

Mr. Pizzi argues his term never expired because he was elected initially to a four-year term. That position is untenable. The Charter defines "vacancy" as:

Vacancies. The office of a Councilmember shall become vacant upon his/her death, resignation, disability, **suspension** or removal from office in any manner authorized by law, or by forfeiture of his/her office.¹³

Under Mr. Pizzi's interpretation, if a Mayor resigns or dies, his term of office would not expire.

That is nonsense.

The relevant portion of Section 112.51 recognizes this reality. It says, "If, during the suspension, the term of office of the municipal official expires and a successor is either appointed or elected,...he or she shall not be reinstated." (emphasis added). Under the "vacancies" and "filling of vacancies" provisions of the Charter, Mr. Pizzi's term did indeed expire and Mayor Slaton commenced office as his duly elected successor. 14

Mr. Pizzi argues that this Court should follow the opinion of the previous town attorney, Mr. Geller, who opined that Mr. Pizzi would be entitled to reinstatement if acquitted. But that opinion was incorrect. The Florida Supreme Court Order reached the conclusion that the new Mayor, Mayor Slaton, will serve until November 2016. As Mayor Slaton has already

¹³ Charter Art. II, § 2.5(a) (emphasis added).

¹⁴ Mr. Pizzi cites a number of election cases but none involves an issue like that presented here. Pls.' Cross-Motion for Summ. Judg. at 8.

¹⁵ See Pls.' Cross-Motion for Summ. Judg. at 3, 14.

¹⁶ Pizzi v. Scott, No. SC14-1634, 2014 WL 7277376, at *1 (Fla. Dec. 22, 2014).

explained, neither the Council, the Mayor, nor the public are bound by the erroneous legal statement of the Town Attorney.¹⁷

Mr. Pizzi says that the Legislature could have written a different statute to cover this exact scenario. But that argument is makeweight. Under any reasonable reading of the language which the Legislature did use, Mr. Pizzi's term expired and Mayor Slaton is his successor.

Mr. Pizzi argues that the Town Charter is in conflict with Section 112.51, Florida Statutes, and should yield to it. But, as just explained, there is no conflict. Furthermore, the Charter states, "This Charter and the powers of the Town shall be construed liberally in favor of the Town." Mr. Pizzi's argument regarding Article IV, Section 7(c), also fails. That provision was cited in the Florida Supreme Court's Order in support of its conclusion in favor of Mayor Slaton.

Mr. Pizzi never addresses the obvious purpose of the Town's Charter provision, which is clearly designed to produce long-term stability and avoid lengthy temporary appointments to the office of Mayor. The special mayoral election in this case cost the Town \$50,158.²⁰ In light of the cost of a special election, plainly the intent of the Charter was to elect a permanent replacement.

¹⁷ See Mayor Wayne Slaton's Mot. for Summ. Final Judg. and Incorporated Memorandum of Law at 14-15. Mr. Planas made the same point in the brief Mr. Pizzi attached to his Cross-Motion. See Addendum to Pls.' Cross-Motion for Summ. Judg. at 22.

 $^{^{18}}$ See Pls.' Cross-Motion for Summ. Judg. at 7.

¹⁹ Charter Art. I, § 1.5.

²⁰ See Pls.' Cross-Motion for Summ. Judg. at 4.

Mr. Pizzi took office under the terms of the Charter. There is no unfairness in requiring Mr. Pizzi to abide by its terms.

CONCLUSION

Mayor Slaton respectfully asks this Court to deny Mr. Pizzi's cross-motion for summary judgment and instead enter summary final judgment in Mayor Slaton's and the Town's favor.

[MAYOR SLATON'S VERIFICATION AND THE SIGNATURE OF COUNSEL FOLLOWS ON NEXT PAGE]

VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing *Mayor Wayne Slaton's*Response in Opposition to Plaintiffs' Cross-Motion for Summary Judgment, and the facts alleged therein are true and correct to the best of my knowledge and belief.

WAYNE SLATON
March 11, 2015

Dated: March 11, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Verified Response in Opposition to Plaintiffs' Cross-Motion for Summary Judgment was served via e-mail on this **11th** day of March, 2015 on:

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